UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

TYRONE KEYS Plaintiff, v. BERT BELL/PETE ROZELLE NFL PLAYER RETIREMENT PLAN and the NFL PLAYER DISABILITY & NEUROCOGNITIVE BENEFIT PLAN Defendants.	)	Case No. 8:18-cv-02098-CEH-JSS

MOTION TO DISMISS COUNTS I AND III ON BEHALF OF DEFENDANTS THE BERT BELL/PETE ROZELLE NFL PLAYER RETIREMENT PLAN AND THE NFL PLAYER DISABILITY & NEUROCOGNITIVE BENEFIT PLAN

The Bert Bell/Pete Rozelle NFL Player Retirement Plan and the NFL Player Disability & Neurocognitive Benefit Plan move to dismiss Counts I and III of Plaintiff Tyrone Keys' Complaint. Both Counts fail because they seek declaratory relief not available under section 502(a)(1)(B) of ERISA. Count III also fails because it does not adequately plead a cause of action for equitable estoppel.

PRELIMINARY STATEMENT

Nearly 15 years ago, Keys was awarded total and permanent ("T&P") disability benefits by the governing Board of the Retirement Plan. In his application for such benefits, Keys submitted medical evidence of numerous injuries, and stated that all of those injuries

arose from his NFL career. Based on the information submitted by Keys, the Board found Keys unable to engage in any occupation due to NFL football activities.

Over the ensuing years, Keys made multiple requests for additional disability benefits. In 2017, after requesting and receiving additional information in connection with one such request, the Board uncovered evidence of fraud. The Board realized that a one-page MRI report of physical injuries that Keys submitted to obtain his T&P award was actually part of a four-page report of injuries Keys sustained in a 2002 car accident. A careful review of Keys' entire file then revealed multiple additional inconsistencies. The Board ultimately concluded that Keys knowingly and intentionally failed to provide complete and accurate information, and terminated his disability benefits.

Keys sues here to overturn the Board's decision. His Complaint states three counts under section 502(a)(1)(B) of ERISA. Counts I and III are defective and should be dismissed. This case should proceed under Count II alone.

In **Count I**, Keys seeks a declaration that he did not provide false information to the Board. However, declaratory relief that does not directly address a participant's entitlement to benefits is not available under section 502(a)(1)(B). The sole question for the Court is whether the Board's decisions regarding Keys' disability benefits were reasonable and supported by substantial evidence in the administrative record. If so, those decisions should be upheld.

In **Count III**, Keys seeks to prevent the Board from taking any action against him under an equitable estoppel theory. His theory is that the Board should have known of the fraud earlier and, therefore, cannot now take action to recover the overpayment to him.

However, equitable estoppel is not appropriate in a claim for benefits. Also, the Complaint does not contain facts sufficient to state a plausible claim for such relief.

BACKGROUND[1]

1. The Retirement Plan

The Retirement Plan provides retirement, disability, and related benefits to eligible former NFL Players ("Players"). There are four categories of T&P benefits—(1) Active Football, (2) Active Nonfootball, (3) Football Degenerative/Inactive A, and (4) Inactive/Inactive B;[2] the difference depends on the nature, timing, and cause of a Player's total and permanent disability.

The Plan is administered by the Board, which has six voting members—three members appointed by the NFL Players Association, and three members appointed by the NFL Management Council. *See* Plan Doc., Amended and Restated as of April 1, 2001 ("PD"), attached as Exhibit 1 to the Declaration of Michael L. Junk ("Junk Decl."), § 8.1. The Board is "responsible for implementing and administering the Plan" and has "full and absolute discretion, authority and power to interpret, control, implement, and manage the Plan." *Id.* § 8.2. Among these powers is the power to construe the terms of the Plan, adopt

[1] For the purposes of this motion, Defendants review only the relevant facts as alleged by Keys. In so doing, Defendants do not admit the truth or falsity of any particular fact, and expressly reserve their right to admit or deny Keys' allegations, as appropriate, in their answer to the Complaint.

[2] The "Football Degenerative" and "Inactive" categories were renamed "Inactive A" and "Inactive B," respectively, effective September 1, 2011.

procedures and rules for administering the plan, and decide benefit claims.[3] *Id.* § 8.2 (a), (b), and (d).

2. Disability Plan

The Disability Plan is a separate plan that automatically paid Keys additional disability benefits once he qualified for benefits under the Retirement Plan. Because the operation of the Disability Plan relies in full on decisions made under the Retirement Plan, the specifics of the Disability Plan are not material to this motion. In effect, the Disability Plan "piggy backs" on the Retirement Plan.

3. Keys' Claims for T&P Benefits

Keys first sought disability benefits from the Plan in 1991. Compl. ¶ 9. At that time, Keys applied for and was awarded Line of Duty benefits, a partial disability benefit that goes to Players who have a "substantial disablement." Compl. ¶ 6. In 1996, shortly before his Line of Duty disability benefits expired, Keys applied for T&P benefits, but that request was denied by the Board. Compl. ¶¶ 13-14.

In May 2002, Keys was involved in a car accident. Compl. ¶ 15; Final Decision Letter to Keys dated Feb. 26, 2018 ("Final Decision Ltr."), attached as Exhibit 2 to the Junk Decl., at 2. In September 2003, Keys reapplied for T&P benefits. Compl. ¶ 16. When asked to "[d]escribe all accidents, injuries, or illnesses that did not result from NFL Football ***(for example, auto accidents)*** and that may have caused or contributed in any way to" the impairments listed in his application, Keys did not disclose the 2002 car accident. *See* Final

[3] The Disability Initial Claims Committee ("DICC") is responsible for the initial determination of disability benefits, as well as the initial decision as to whether a Player should continue to receive disability benefits. PD § 8.5. Appeals of adverse decisions by the DICC are decided by the Retirement Board. *See id.* § 8.2(b).

Decision Ltr. at 2. Keys attributed all of his impairments and resulting disability to NFL football. *Id.* ("All injuries were the direct result of Pro Football unfortunately."). And then he signed and dated the application, certifying that "all the information provided . . . is, to the best of [his] knowledge, true, correct, and complete" and recognized "that [he] may be subject to loss of benefits. . . if [he made] any false or misleading statements or omissions." *Id*. Keys also submitted medical records, including a ***portion*** of an August 2003 report from Dr. Chet Janecki that discussed Keys' injuries and the treatment provided for them. *Id.* at 2-3. The DICC ultimately awarded Keys Football Degenerative T&P benefits based on Keys' application and medical records, believing that Keys was totally and permanently disabled due solely to NFL football. Compl. ¶¶ 18-19.

In the years that followed, and for reasons not relevant here, the Board reconsidered Keys' entitlement to T&P benefits on several occasions. *See* Compl. ¶¶ 21-30. Eventually, in June 2016, the Board reviewed documents that it had requested and received from the SSA. *See* Compl. ¶ 32. In the SSA file, the Board discovered a ***complete*** copy of Dr. Janecki's August 2003 report, which demonstrated that Keys had been in a car accident in May 2002, and the impairments underlying his 2003 application were causally related to that car accident, rather than football. *See* Compl. ¶ 32; Final Decision Ltr. at 2-3. As the Board noted in its final decision letter, Dr. Janecki concluded in his report that all of Keys' disabilities were "the ***direct result*** of injuries that [Keys] sustained in [the May 7, 2002] motor vehicle accident." Final Decision Ltr. at 3 (emphasis added).

In August 2017, based on these and other discrepancies, the Board determined that (i) Keys' 2003 application was "intentionally and materially incomplete and inaccurate" due

to the failure of Keys to disclose the 2002 car accident, and (ii) Keys was never entitled to Football Degenerative/Inactive A benefits because the car accident—and not football—was likely the proximate cause of Keys' total disability in 2003. Compl. ¶ 32; Final Decision Ltr. at 1-3. As such, the Board downgraded his benefits to the lowest level, Inactive/Inactive B. *See* Compl. ¶¶ 31-32; Final Decision Ltr. at 1. The Board subsequently notified Keys that he was no longer entitled to Inactive A benefits, that he had been overpaid by the Plan by $831,488.28, and, in an effort to partially recover on this overpayment, the Board was terminating his T&P benefits altogether. Compl. ¶ 31; Final Decision Ltr. at 1.

STANDARD OF REVIEW

Keys must allege "enough facts to state a claim to relief that is plausible on its face," meaning he must allege facts that "allow[] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). In deciding a motion to dismiss under Fed. R. Civ. P. 12(b)(6), the court accepts as true the factual allegations in the complaint and construes such allegations in the light most favorable to the plaintiff. *Davidson v. Capital One Bank (USA), N.A.*, 797 F.3d 1309, 1312 (11th Cir. 2015). While the scope of the Court's review is generally "limited to the four corners of the complaint," the court may consider documents outside of the complaint if (1) they are "central to the plaintiff's claim," and (2) their "authenticity is not challenged." *Speaker v. U.S. Dep't of Health & Human Servs. Centers for Disease Control & Prevention*, 623 F.3d 1371, 1379 (11th Cir. 2010).

ARGUMENT & AUTHORITIES

I. Counts I fails because it seeks relief beyond benefits due under the terms of the Retirement Plan.

Keys brings Count I under ERISA section 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B). Compl. ¶ 36. Keys seeks a declaration that the Board's decisions (1) that Keys was overpaid benefits, and (2) to terminate Keys' benefits to partially recover that overpayment, were an abuse of discretion "***since*** [he] did not provide false information". Compl. ¶¶ 36, 48 (emphasis added). Plainly stated, Keys asks this Court to declare that he did not provide false information. This remedy does not exist under the statute.

Section 502(a)(1)(B) allows a participant to sue "***to recover benefits*** due to him under the terms of his plan, to ***enforce his rights under the terms of the plan***, or to ***clarify his rights to future benefits*** under the terms of the plan." 29 U.S.C. § 1132(a)(1)(B) (emphasis added). Keys makes a claim for benefits in Count II, and that is the only proper Count of his complaint. Count I asks this Court to opine on the veracity of the documents that Keys submitted, and to his state of mind in submitting such documents. This type of declaratory relief is not available under section 502(a)(1)(B). *See Heffner v. Blue Cross & Blue Shield of Alabama, Inc.*, 443 F.3d 1330, 1338 (11th Cir. 2006) ("The Supreme Court has explained that there are three distinct remedies available to a participant or beneficiary under § 502(a)(1)(B): 'an action ... [1] to recover accrued benefits, [2] to obtain a declaratory judgment that she is entitled to benefits under the provisions of the plan contract, and [3] to enjoin the plan administrator from improperly refusing to pay benefits in the future.'"); *Boyles v. Am. Heritage Life Ins. Co.*, No. 3:15-CV-274, 2016 WL 4031295, at *11 (W.D. Pa. July 26, 2016) (Under section 502(a)(1)(B), a participant "may obtain accrued benefits due, a

declaratory judgment about entitlement of benefits, or an injunction to require the administrator to pay benefits. ERISA does not provide a cause of action for declaratory judgment apart from that found in Section 502(a)(1)(B)." (internal citations omitted)).

II. Count III does not state a viable claim for relief under the theory of equitable estoppel under ERISA 502(a)(1)(B).

Count III is also brought under section 502(a)(1)(B) of ERISA. Compl. ¶ 47. It is styled as an equitable estoppel claim, and it is designed to prevent the Board from collecting the benefits that were overpaid to Keys because of his fraud. Compl. ¶ 45, *see also* Compl. ¶¶ 46, 47, 51.[4] Count III should similarly be dismissed because it requests relief not available under the statue. Count III should also be dismissed because it is inadequately pled.

Keys acknowledges that Count III is a claim for benefits. Compl. ¶ 47 ("This claim. . . ***is a claim for benefits***, more specifically, the retention of benefits paid.") (emphasis added). Again, Keys already brings a claim for benefits in Count II.

ERISA does not allow a participant to retain overpayments merely because of the passage of time. The Eleventh Circuit has recognized a claim for equitable estoppel when the terms of a plan are unclear and a participant seeks to enforce the terms of the plan as they were represented to him. To make this claim, a plaintiff must show that "(1) the relevant provisions of the plan at issue are ambiguous, and (2) the plan provider or administrator has made representations to the plaintiff that constitute an informal interpretation of the

[4] In support of the claim, Keys alleges that either the DICC and/or the Retirement Board were aware of the 2002 accident as early as April 2004 after reviewing certain of Keys' medical records, but chose not to pursue additional information regarding the accident. Comp. ¶¶ 39-45.

ambiguity." *Jones v. Am. Gen. Life & Acc. Ins. Co.*, 370 F.3d 1065, 1069 (11th Cir. 2004). Generally, such representations or interpretations must be oral. *Katz v. Comprehensive Plan of Grp. Ins.*, 197 F.3d 1084, 1090 (11th Cir. 1999); *Glass v. United of Omaha Life Ins. Co.*, 33 F.3d 1341, 1347 (11th Cir. 1994) (citing *Kane v. Aetna Life Ins.*, 893 F.2d 1283, 1285–86 (11th Cir. 1990)).

The Complaint does not contain the factual allegations necessary to support an ERISA 502(a)(1)(B) equitable estoppel claim. Nowhere does Keys allege that Plan terms are ambiguous. Nowhere does Keys allege that the Board made oral representations to him. *See Kobold v. Aetna U.S. Healthcare, Inc*., 258 F. Supp. 2d 1317, 1322 (M.D. Fla. 2003) ("Plaintiff's Second Amended Complaint fails to assert an ambiguous provision in the plan, nor does it assert an oral representation interpreting the plan was made to Plaintiff. Therefore, Plaintiff is precluded from pursuing a theory of equitable estoppel.").

Even if the Court viewed Count III as a claim for equitable relief under ERISA section 502(a)(3)—which is not how Keys has pled it—relief in the form of equitable estoppel would not be appropriate because Keys has an adequate remedy under ERISA section 502(a)(1)(B). And, where "an ERISA plaintiff . . . has an adequate remedy under Section 502(a)(1)(B), [he] cannot alternatively plead and proceed under Section 502(a)(3)." *Ogden v. Blue Bell Creameries U.S.A., Inc.*, 348 F.3d 1284, 1287 (11th Cir. 2003); *see also Lee v. Equity Properties Asset Mgmt., Inc.*, No. 8:13-CV-2239-T-30EAJ, 2015 WL 6956556, at *14 (M.D. Fla. Nov. 10, 2015) ("A plaintiff who has an adequate legal remedy under section [502](a)(1)(B) is precluded from pursuing separate claims for equitable relief under section [502](a)(3)."). At bottom, Keys alleges a section 502(a)(1)(B) claim for benefits;

Keys cannot disguise this claim as another, and any other cause of action through which Keys seeks benefits should be dismissed.

CONCLUSION

For the foregoing reasons, the Court should dismiss Counts I and III of Keys' Complaint.

Dated: October 29, 2018

Respectfully submitted,

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